

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/25/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000634

FILED: _____

STATE OF ARIZONA

MICHAELLA AGUILARHESLIN

v.

DIONNE J MILLER

DAVID BURNELL SMITH

REMAND DESK CR-CCC
TEMPE JUSTICE CT-EAST
FINANCIAL SERVICES-CCC

MINUTE ENTRY

EAST TEMPE JUSTICE COURT

Cit. No. ---

Charge: A. DUI
B. DUI ABOVE .10
C. FAILURE TO CONTROL VEHICLE TO AVOID ACCIDENT
D. NO PROOF OF INSURANCE
E. EXTREME DUI ABOVE .18

DOB: 03/27/74

DOC: 03/24/00

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This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This Court has taken this matter under advisement and reviewed the record from the East Tempe Justice Court, and memoranda of counsel.

Following a one-vehicle rollover accident in which Appellant's car skidded some 260 feet on its roof,¹ Appellant crawled shaken from the wreck, disoriented and smelling of alcohol.² Because of her injuries, which ultimately proved minor, she was taken "to Desert Samaritan Hospital for observation, examination and treatment."³

Appellant complains that the trial court committed reversible error by denying her Motion to Suppress the Blood Draw "as [Officer Wood] in his investigation did not comply with A.R.S. Section 28-1321, [the Implied Consent Law] specifically, he did not arrest the Appellant as required by the statute and case law."⁴ Appellant maintains that failing to follow the procedures detailed in A.R.S. Section 28-1321 "...ultimately prevent[ed] a fair trial in this case"⁵

When a police officer has probable cause to believe a suspect is driving under the influence of alcohol, he may obtain a search warrant and have qualified medical personnel draw a sample of the suspect's blood for law enforcement purposes without first placing the suspect under arrest.⁶ Additionally, analysis of the sample may be used as evidence in a subsequent prosecution.⁷

¹ Appellee memo, page 2.

² Appellee memo, page 1.

³ Appellee memo, page 2.

⁴ Appellant memo I, page 1.

⁵ Appellant memo I, page 3.

⁶ State v. Clary, 196 Ariz. 610, 2 P.3d 1255 (2000).

⁷ Id.

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Here, Officer Wood was justified in foregoing an arrest because his testimony revealed he would have had to physically take Appellant into custody when she needed to go to the hospital on account of her injuries. Furthermore, jail personnel would not have taken her because she was in a rollover accident.

A.R.S. Section 28-1321(D) as interpreted in State v. Clary⁸ clearly provides an alternative to the requirements of A.R.S. Section 28-1321(B). Officer Wood, after obtaining the search warrant, correctly instructed competent medical personnel to administer the blood draw "... pursuant to a search warrant."⁹ It was not necessary that Appellant first be arrested.¹⁰

This Court concludes that the trial court did not err in denying Appellant's Motion to Suppress.

IT IS THEREFORE ORDERED affirming the East Tempe Justice Court's denial of Appellant's Motion to Suppress the Blood Draw, the judgments of guilt, and sentences imposed.

IT IS FURTHER ORDERED remanding this matter back to the East Tempe Justice Court for all further and future proceedings in this cases.

⁸ State v. Clary, supra.

⁹ A.R.S. Section 28-1321(D)(1).

¹⁰ State v. Clary, supra.